IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4853 OF 2004

Chenna Boyanna Krishna Yadav ...Applicant
Vs.
1. The State of Maharashtra,
2. The Union of India through
CBI, Mumbai ...Respondents

Mr. V.R. Manohar, Sr. Counsel with Mr.A.P.Mundargi, Chandana Salgaonkar and M.Roopender i/by R.A. Shaikh for the Applicant.

Mr. A.S. Gadkari, A.P.P. for the Respondent No.1.

Mr.Sushilkumar, Sr. Counsel with Mr. Raja Thakare and Mr.A.M. Chimalkar for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 19, 2005.

ORAL JUDGMENT:

1. This is the second Application for bail filed by the Applicant who is an accused in offences relating to printing counterfeit stamps and forgery in various States including the State of Maharashtra. This is a case relating to a scam which threatened the economy of the Country. The main accused in the case is Abdul Karim Ladsab Telgi(hereinafter referred to as 'Telgi'). The allegation of the prosecution is that during the course of investigation of the case, number of places were raided and huge quantity of counterfeit stamps and printing machinery worth Rs.2128 crores was seized from several accused persons.

2. The first Application for bail made by the Applicant to this Court being Criminal Application

No.669 of 2004 was decided by this Court (Coram: D.B. Bhosale,J) by the order dated 06th August, 2004. When this second Application came up before this Court on 19th April, 2005, the learned Judge of this Court (Coram: A. M. Khanwilkar, J) directed that this Application should be placed before the same learned Judge who had rejected the first Bail Application filed by the Applicant. Accordingly, the office placed this Application before the same learned Judge who had rejected the earlier Bail Application. The Order Sheet shows that by order dated 15th July, 2005 the learned Judge (Bhosale, J.) directed the office to obtain appropriate orders from the Hon'ble the Chief Justice for placing this Application alongwith other Applications made by the co-accused in the same case before the Regular Court dealing with Bail Applications. The learned Judge was of the opinion that considering the peculiar facts and circumstances of the case, this Application should be heard alongwith the Applications of other co-accused by the Regular Court. The office noting shows that on 03rd August, 2005 the papers of this Application were placed before the Hon'ble the Chief Justice. An Administrative Order was passed by the Hon'ble the Chief Justice on the very day by which the present Application was assigned to this Court and that is how I have heard this Application.

3. Before referring to the submissions made by the learned Counsel for the parties, a brief reference will have to be made to the facts of the case. The present Application relates to an offence which was originally registered vide C.R. No. 135 of 2002 at Bund Garden Police Station, Pune. The offence was registered under various sections of the Indian Penal Code. The sections of the Indian Penal Code which are invoked are sections 120(B), 255, 256, 257, 258, 259, 263(A), 420, 467, 468, 471, 472, 473, 474, 475, 476, and 34. The offence was also registered under the provisions of section 63(a) and 63(b) of the Bombay Stamp Act, 1958. Subsequently the provisions of the Maharashtra Control of Organised Crimes Act, 1999 (hereinafter referred to as MCOC Act) were also invoked and the sections 3(1)(i), 3(1)(ii), 3(2), 3(4), 3(5), 4 and 24 of the MCOC Act were applied. Against some of the accused including the Applicant herein commission of offences under section 7, 13(i)(d) of the Prevention of Corruption Act, 1988 have been alleged.

4. The provisions of the MCOC Act were invoked on 03rd September, 2002. Initially investigation was carried out by a Special Investigation Team (hereinafter referred to as SIT) and later on, under the orders of the Apex Court the investigation of the case alongwith other fourty seven cases was

transferred to CBI. The Applicant was arrested on 06th September, 2003 and was remanded to Police Custody. Since 26th September, 2003 he is in judicial custody. The chargesheet came to be filed against the Applicant on 29th December, 2003. Thereafter, a supplementary chargesheet was filed by the CBI on 26th July, 2005.

5. The Applicant is an Advocate. In the year 1994 he was elected as a member of the Legislative Assembly of the State of Andhra Pradesh. He was also appointed as a whip of Telgu Desham Legislative Party. Till the year 1998, he was a Minister for the Department of Animal Husbandary and Dairy Development in Andhra Pradesh Government. In the year 1999 he was again elected as a Member of the Legislative Assembly. For the period between October, 1999 to November, 2001, the Applicant was a Minister holding portfolios of Department of Labour and Employment as well as Factories.

6. On June 15, 2002 a premises held by the principal accused Telgi were searched by the Investigating Agency which was at the relevant time the Bund Garden Police Station, Pune. Thereafter, on 11th January, 2003 the same premises were searched by the SIT. At that time a micro audio cassette was seized from the premises of the co-accused Telgi. The

said cassette contains recording of alleged conversation between the Applicant and the said co-accused Telgi. The date mentioned on the said audio cassette is 16th January, 1998. Voice sample of the Applicant was obtained and the report of the Senior Scientific Officer of the Forensic Laboratory records an opinion that the voice recorded in the said seized cassette is the voice of the Applicant.

7. The allegation in short is that in the year 1998, the Applicant was involved in kidnapping one Abdul Wahid and one Sadashiva who were the men employed by the co-accused Telgi and demanded ransom of Rs.2 crores from Telgi for releasing the said two persons. As a result of the said offence, the Applicant came in close contact with co-accused Telgi. The contact of the Applicant with the co-accused Telgi gave a rise to the association between the Applicant and the said Telgi which resulted in the Applicant rendering active support and help to the said Telgi in his alleged unlawful activities of Organised Crime Syndicate in the State of Andhra Pradesh. As stated earlier, the alleged Organised Crime Syndicate of co-accused Telgi relates to printing and manufacturing of counterfeit stamps and other documents and sale thereof. The allegation seems to be that the Applicant received huge amounts from time to time from the Organised Crime Syndicate headed by Telgi and in

turn he helped the Organised Crime Syndicate in carrying out unlawful activities in the State of Andhra Pradesh. The Applicant being a very influential political person, he gave protection to business of Telgi and his Organised Crime Syndicate of printing and sale of fake stamp papers. The allegation against the Applicant is of knowingly aiding and abetting the Organised Crime Syndicate of Telgi in carrying on its continuing unlawful activities.

8. The learned Senior Counsel Shri. Manohar appearing for the Applicant alongwith learned Counsel Shri. A. P. Mundargi, have made extensive submissions on behalf of the Applicant. To begin with, Shri. Manohar stated that the changed circumstances on the basis of which the second Bail Application is filed in this Court can be summarised as under:

(i) Law subsequently laid down by the Apex Court in the decision reported in J.T. 2005(4) Supreme Court, Page 123 (Ranjeetsingh Sharma Vs. State of Maharashtra & Anr.)

(ii) Filing of the supplementary chargesheet by the Investigating Agency- CBI in July,

2005.

(iii) Long passage of time from the date of rejection of earlier Application for bail.

He submitted that maximum punishment provided under section 24 of the MCOC Act is three years and the Applicant is already in custody for more than two years. Apart from the change of circumstance, Shri. Manohar has raised issue relating jurisdiction of the learned Special Judge to try the offences against the Applicant. Broadly speaking, the said submission is that the Applicant is charged with commission of offences under MCOC Act based on incidents which have taken place outside the State of Maharashtra and therefore, the provisions of MCOC Act cannot be applied. The second submission in this behalf is that even assuming that provisions of the MCOC Act can be applied, the jurisdiction of the Special Court does not extend to any offence which is committed before the coming into force of the MCOC Act. The third submission is that even the commission of offences under the Prevention of Corruption Act, 1988 have been alleged and except for the Special Judge as notified under the said Act of 1988, no other court has jurisdiction to try the case.

9. Shri. Manohar placed reliance on the decision of the Supreme Court reported in **1975(3) Supreme Court Cases, Page 706 (Supreintendent and Reman Brancer of legal affairs, West Bengal Vs. Mohan Singh and others).** The said decision is an authority for the proposition that change of circumstances with the passage of time allows even a second Application to be filed under section 482 of the Code of Criminal Procedure, 1973. His submission is that the same principle applies to the Applications for Bail. The second judgment which is relied upon by Shri. Manohar is reported in **AIR 1978 Supreme Court, Page 527 (Babu Singh & Ors. Vs. The State of Uttar Pradesh).** Shri. Manohar pointed out that the Apex Court has held in the said decision that order refusing an Application for bail does not preclude another Application on a later occasion giving more material, further developments and different considerations.

10. Shri. Manohar submitted that a co-accused in the same case Shri. Ranjeetsingh Sharma against whom more evidence was available has been enlarged on bail and on that ground also the Applicant is entitled to file the second bail Application. Relying upon the decision of the Apex Court reported in **2005(2) Supreme Court, Page 42 (Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr.) (hereinafter referred to as the second case of Kalyanchand Sarkar).** Shri.

Manohar submitted that the second bail Application was maintainable as principles of re-judicata and constructive re-judicata as well as principles analogous to re-judicata are foreign to the criminal jurisprudence.

11. Shri. Manohar extensively referred to the case of Ranjeetsingh Sharma (Supra). He submitted that the Apex Court has interpreted the various provisions of the MCOC Act in said decision and in particular the definition of the word "abet" contained in section 2(1)(a) of the MCOC Act. He submitted that though the definition on the face of it may appear to be expansive in nature, the words "communication" or "association" used therein must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. He submitted that mere connection or association which is not having any nexus with the commission of the concerned Organised Crime will not be covered by the definition of the word "abet". He submitted that while the first bail Application was considered, an error of law has been committed by this Court while interpreting the definition of Organised Crime under section 2(1)(e) of the MCOC Act. He submitted that the use of words "unlawful means" in the definition of organised crime in Section 2(1)(e) will have to be read ejusdem generis with the earlier

words used in the said provision viz; use of violence, threat of violence, intimidation or coercion. He submitted that the Apex Court has held that primafacie it appears that the legislature never intended that the words "unlawful means" should be widely construed as including any unlawful means having regard to the sections 400, 401 and 413 of the Indian Penal Code which relate to the offences of criminal breach of trust or cheating. He submitted that while deciding the first Bail Application of the Applicant, this Court has committed an error by ignoring that the explanation "any unlawful means" must refer to an act which has a direct connection with commission of an offence which MCOC Act seeks to prevent. He urged that the words "other unlawful means" would draw colour and complexion from the words immediately preceding them so as to include only those acts akin to violence, threat and intimidation. He submitted that merely because a person commits offences under the Indian Penal Code on more than one occasion, it may not be sufficient to attract the provisions of the MCOC Act. He submitted that peaceful and non-violent acts such as act of printing and selling of fake stamps is by no stretch of imagination an Organised Crime.

12. Shri. Manohar submitted that the acts complained of against the Applicant are of abduction

of two men employed by the co-accused Telgi and the demand of ransom of Rs.2 crores are completely disassociated from the principal offence alleged under the MCOC Act. He submitted that the said allegations are destructive of the theory of the involvement of the Applicant in the alleged offence of printing and selling fake stamps. He submitted that, therefore, on the face of it, it is impossible to draw an inference that the Applicant was a member of conspiracy or had abetted of commission or facilitation of the crime with which co-accused Telgi and other co-accused are associated. He submitted that the provisions of MCOC Act cannot apply to the Applicant.

13. Next limb of submission of Shri. Manohar is that when the alleged action of kidnapping and demand of ransom has taken place, the Applicant was only a member of Legislative Assembly. Placing reliance on decision of the Apex Court in the case of **Ramdas Nayak Vs. A.R. Antulay reported in (1984) 2 Supreme Court Cases, Page 183** he submitted that at the relevant time the Applicant was not a public servant and therefore, section 24 of the MCOC Act cannot be attracted.

14. He urged that the theory of recovery of micro audio cassette from the premises of the co-accused Telgi is itself doubtful. He submitted that prior to the search by SIT, the Officers of Bund Garden Police

Station, Pune had searched the same premises where the cassette was subsequently found. He relied upon the statements of the witnesses recorded in connection with the offences registered at Begum Bazar Police Station at Hyderabad, State of Andhra Pradesh and Madiwala Police Station at Banglore, State of Karnataka. He submitted that a deliberate attempt is made to bring the case within the perview of the MCOC Act by recording second statement of witness Sadashiva nearly one month after the arrest of the Applicant. He submitted that statements of other witnesses Sanjay Singh, Raju Shrivastava and Shamsundar were also recorded after the arrest of the Applicant. He pointed out that the alleged victims of the offence of kidnapping themselves appear to have shared the ransom money. He submitted that the story of kidnapping is an antithesis to the prosecution case.

15. Lastly, relying upon the decision of the Apex Court in the case of Ranjeetsingh Sharma, he submitted that the restrictions imposed by sub-section 4 of Section 21 of the MCOC Act on the powers of the court to grant bail cannot be stretched too far. The submissions of Shri. Manohar were supplemented by the learned Senior Counsel Shri. A.P. Mundargi by referring to the relevant part of the chargesheet and statements of various witnesses. He has also taken me through the order passed by this Court while deciding

the first Bail Application of the Applicant.

16. The learned Senior Counsel appearing for the Investigating Agency- CBI at the outset submitted that the second Bail Application filed by the Applicant was not maintainable. He placed reliance on the decision of the Apex Court reported in **2004(7) Supreme Court Cases Page 528 Kalyanchandra Sarkar Vs. Rajesh @ Pappu Yadav and another (hereinafter referred to as the first case of Kalyanchandra Sarkar)** as well as on the second case of Kalyanchandra Sarkar. He submitted that as held by the Apex Court in the second case of Kalyanchandra Sarkar, the second Bail Application was maintainable only when there was a material change in the fact situation. He submitted that the Apex Court has decided the case of Ranjeetsing Sharma in the light of the peculiar facts of the said case. He submitted that there is no change in law. He submitted that failure to argue the point relating to jurisdiction in earlier Bail Application and attempt to argue the point of jurisdiction in second Bail Application is impermissible as by no stretch of imagination there is a material change in the fact situation.

17. He has invited my attention to various factual aspects of the case by referring to the material appearing in the chargesheets. He submitted that the

allegation regarding kidnapping of two men belonging to Telgi and demanding ransom cannot be termed as antithesis to the prosecution case and infact, the said act on the part of the Applicant is beginning of the association of the Applicant with co-accused Telgi and he submitted that there is material on record to show that thereafter, the Applicant actively supported the Organised Crimes Syndicate of Telgi and infact accepted the large amounts from the Organised Crimes Syndicate. He submitted that the printing of fake stamps, the distribution and sell thereof is an Organised Crime. He submitted that it is a continuing activity. He pointed out that there is enough material on record to show that the Applicant abetted the said Organised Crime activity. He submitted that it may not be necessary for this Court to go into aspect of interpretation of "other unlawful means" as there is material on record to show that there was use of violence, intimidation and coercion in the unlawful activities of various accused persons as members of Organised Crimes Syndicate.

18. The learned Senior Counsel also invited my attention to the averments made and the grounds taken in the first Bail Application filed by the present Applicant. He invited my attention to ground ‘h’ in the said Application in which a challenge was made to the jurisdiction of the learned Special Judge, Pune.

He submitted that ground of jurisdiction was taken but was not argued. He pointed out that all the points which are argued by the learned Senior Counsel appearing for the Applicant were part of the Application for discharge filed by the Applicant before the Special Court and the Special Court by a reasoned order has rejected the Application. He submitted that a copy of the order passed on discharge Application by which the challenge on the ground of jurisdiction was rejected by the Special Court was not deliberately annexed to the second Bail Application. He submitted that while dealing with the issue of discharge, the learned Special Judge has decided the said point against the Applicant and as a consequence of failure of the Applicant to challenge the said order, the said decision on the said issues has attended finality.

19. The learned Senior Counsel further submitted that the Applicant cannot rely upon any material which is not forming part of the chargesheet in support of the Bail Application. The learned Senior Counsel submitted that the decision of the Apex Court in **AIR 2004 HCCL .COM Page 1055 (State of Orissa Vs. Debendra Nath Pandhi)** has overruled the earlier decision in the case of Satish Mehra Vs. Delhi Administration. He submitted that the view taken by the Apex Court is that even at the time of hearing of

Application for discharge, the accused has no right to rely upon any material which is not forming the part of the chargesheet. He, therefore, submitted that the documents which are not part of the chargesheet cannot be considered by this Court while deciding the second bail Application.

20. He submitted that the activities of the Applicant continued even after the coming into force of the MCOC Act. From 22nd October, 1999 the Applicant became Minister and therefore, in any event from that day he was a public servant. He submitted that this Court is bound by the view taken by it while deciding the earlier Bail Application.

21. In reply to the submissions of the learned Senior Counsel appearing for the CBI, Shri. Mundargi, learned Senior Counsel appearing for the Applicant has placed reliance on certain decisions. Shri. Mundargi submitted that the case of State of Orissa (Supra) will have no application as the Apex Court has dealt with the scope of Application for discharge and since Application for bail relates to liberty of an individual, reliance can be always placed on the documents which are not part of the chargesheet. He submitted that the order passed by the Trial Court on the discharge Application cannot come in the way of the Applicant as the case will have to be considered

by this Court on its own merits and this Court is not bound by what has been held while deciding the Application for discharge. He submitted that the scope for Application for discharge and Application for Bail is completely different. He placed reliance on some other decisions in support of the contention of the Applicant that the words "other unlawful means" will have to be read " ejusdem generis" with the earlier words used in the relevant section. He submitted that the CBI cannot place reliance on the first case of Kalyanchandra Sarkar (Supra) as the said decision is explained by the Apex Court in the later decision in the second case of Kalyanchandra Sarkar (Supra).

22. I have considered the submissions. Firstly, I propose to deal with the legal submissions made regarding the scope of the second Bail Application. Reliance has been placed by Shri. Manohar on decision of the Apex Court reported in **(1975)3 Supreme Court Cases Page 706 (Superintendent and Legal Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others).** It must be noted here that the Apex Court was dealing with the provisions of Section 561(A) of the old Code of Criminal Procedure which is on par with the section 482 of the present Code. In my view, the said decision will not help the Applicant as the considerations for exercise of power under section 482

of the said Code are different from considerations which govern the Application for Bail. If a long passage of time brings about a situation which warrants exercise of inherent power under section 482 of the said Code, the High Court can always exercise the said power notwithstanding rejection of earlier Application made for invoking the same provision. In my view, the said decision cannot apply to Bail Applications. The second decision relied upon by Shri. Manohar is the case of Babu Singh (Supra). The Apex Court in the said decision was dealing with a Bail Application of an accused which was filed in pending Criminal Appeal before the Apex Court. All that the Apex Court has said in the said decision is that an order refusing an application for bail does not necessarily preclude another on a later occasion, giving more materials, further developments and different considerations. The Apex Court observed that "while we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not overturning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con." All that the Apex Court has held in the case of Babu Singh (Supra) is that once an Application for bail made by the Applicant before the Apex Court is

rejected, the Court is not precluded from considering a fresh Application at a later stage. However, the said decision does not specifically lay down as to what is the scope of the Second Application.

23. The learned Senior Counsel appearing for the CBI has relied upon the observations made by the Apex Court in the first case of Kalyanchandra Sarkar (Supra). He invited my attention to following observations made by the Apex Court in paragraph No.14 which read thus:

> In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. **In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by**

> **itself or coupled with the period of incarceration would be sufficient either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.**(Emphasis supplied)

24. My attention is also invited to paragraph No.21 of the said decision. However, in view of the second case of Kalyanchandra Shankar it is obvious that the observations made by the Apex Court in the first case of Kalyan Chandra Sarkar cannot be read as a precedent. While deciding with the second case of Kalyan Chandra Sarkar, the Apex Court in paragraph No.39 of its decision referred to the first case of Kalyanchandra Sarkar and specifically held that in the first case of Kalyanchandra Sarkar, there has been no declaration of any law made as such and the Apex Court applied requirement of section 437 of the Code to the facts of the case and came to the conclusion that there was a prima facie case against the Respondent in the said case. The Apex Court also observed that no law has been laid down in another recent decision in case

of **Jayendra Saraswati Vs. State of Tamil Nadu reported in 2005(2) Supreme Court Cases Page 18.** However, in the second case of Kalyan Chandra Sarkar, the Apex Court has considered this scope of successive bail Applications. In this behalf the reference will have to be made to paragraph Nos.19 and 20 of the said decision which reads thus:

> 19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. **The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a larger stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the**

administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. **Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application.** Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts

earlier, including the Apex Court of the country. (Emphasis supplied)

25. The sum and substance of the law laid down by the Apex Court in the said case is that the second bail Application can be entertained if there is material change in fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete. The Apex Court has thus defined a limited area in which an accused who has been denied bail earlier can move a subsequent application.

26. The question which arises for consideration is whether mere passage of time by itself can be considered to a material change in the fact situation. The another question will be whether issue relating to jurisdiction can be considered for the first time in the second bail application and the third issue will be whether the decision of the Apex Court in the case of Ranjeetsingh Sharma (Supra) brings about a change in law which requires earlier view taken by this Court to be interfered with. In so far as lapse of time is concerned, it cannot be said that lapse of time by itself brings about a material change in the fact situation. Only if lapse of time brings about a material change in fact situation that will afford a ground for consideration of second bail Application.

The second bail Application can be entertained only if it is shown that there is a change in fact situation or change in law requiring earlier view to be interfered with. Therefore, this second Application cannot be entertained only on the ground of long lapse of time from the order in the first Application. Other factual argument made by the Applicant in this behalf was that maximum sentence under section 24 of the MCOC Act is three years and the Applicant is already in custody for more than two years. However, the said argument cannot be considered as the other sections of the MCOC Act prescribing longer punishment have been invoked. The first bail Application made by the Applicant has been rejected by this Court about a year back on 06th August, 2004.

27. On the date on which the second bail application was filed and even as of today, it cannot be said that there is a material change in the fact situation save and except the filing of supplementary chargesheet by CBI in July 2005. However, it must be borne in mind that hardly any new material is placed on record by new chargesheet. The said chargesheet appears to be a consolidation of all earlier chargesheets.

28. Another aspect is the change in law brought about by the Apex Court in the case of Ranjeetsingh

Sharma(Supra). For that purpose, it will be necessary to refer to the order passed by this Court in the first bail Application. While considering whether the Applicant has abetted the Organised Crime Syndicate of Telgi, this Court relied upon its judgment dated 16th July, 2004 in Criminal Application No.572 of 2004 filed by Ranjeetsingh Sharma. This court placed reliance on paragraph Nos.34 and 36 of the said decision dated 16th July, 2004. This Court also relied upon paragraph No.39 of the said decision which holds that only association of any person with actual knowledge or having reason to believe that such person is engaged in assisting in any manner in Organised Crimes Syndicate is sufficient to hold that such person has aided and abetted the case of Organised Crimes Syndicate. The decision of the Apex Court in case of Ranjeetsingh Sharma has a result of upsetting the view taken by this Court in the judgment dated 16th July, 2004 in so far as this aspect referred to in paragraph No.39 is concerned. In my view, the decision of the Ranjeetsingh Sharma's case by the Apex Court has brought about a change in law which warrants consideration of the second bail application.

29. When I am on this aspect, it must be noted here that Shri. Manohar urged before me that apart from aforesaid change in law, the interpretation adopted by this Court while deciding the first bail

Application of the expression "other unlawful means" in section 2(1)(e) of the MCOC Act is no longer correct in view of the decision in case of Ranjitsingh Sharma. He pointed out that this Court held that the expression "other unlawful means" cannot be construed in a limited sense with the aid of "ejusdem generis" Rule. He submitted that the view taken by this Court requires re-consideration in view of observations made by the Apex Court in the case of Ranjeetsingh Sharma in paragraph No.31 of the said decision by observing that prima facie the legislatrue did not intend that the word "unlawful means" can be given a wide construction. He submitted that in view of the observations made by the Apex Court in paragraph No.31 and 32, this Court will have to consider his submission on the interpretation of word expression "other unlawful means". He submitted that this field has been left open by the Apex Court. There is substance in the said submission of Shri. Manohar in view of what is observed by the Apex Court in paragraph Nos.31 and 32 and therefore, this may be a ground available in the second bail Application. So far as submission of Shri. Manohar based on the Ranjeetsingh Sharma’s case as regards the scope of definition of the word "abet" is concerned, I am going to deal with the said submission in later part of this judgment. However, so far as the aspect of definition under section 2(1)(e) of the MCOC Act is concerned, in my view, considering the material

on record to which reference will be made at a later stage, it will not be necessary to decide whether phrase "other unlawful means" will have to be read as "ejusdem generis" as I find that there is material available to show that there was use of violence or threat or intimidation by the members of the Organised Crime Syndicate.

30. Another question is whether this Court can consider the plea of jurisdiction raised by Shri Manohar in this second Application. The learned Senior Counsel appearing for the CBI contended that the issue regarding jurisdiction was agitated in the earlier bail application made by the Applicant, but it was not argued at the time of hearing. The Apex Court in the second case of Kalyanchandra Sarkar has held that the issues which had been canvassed earlier would not be permitted to be re-agitated on the same ground as the same would lead to speculation. The Apex Court has also held that principles of re-judicata will not apply to the criminal proceedings. Thus, what follows is even the principles of constructive re-judicata will not apply and therefore, it cannot be argued that though point of jurisdiction was raised in earlier Application, it was not agitated and therefore, it cannot be agitated in the second bail Application. In fact, what has been held by the Apex Court is that the issues which had been canvassed earlier would not be

permitted to re-agitated. The issue of jurisdiction is obviously not canvassed at the time of hearing of the earlier bail application though a ground to that effect was taken in the Application. The submission that the plea was taken but was not canvassed or agitated will bar the consideration of said issue in the subsequent application is an argument based on the principles of constructive re-judicata. Therefore, said argument will have to be rejected. This submission will have to be considered in this second Application as it was not canvased in the first Application. Therefore, I have considered the submissions made by the Applicant on the issue of jurisdiction of the Special Court.

31. Thus this second Bail Application will have to be considered on the following grounds:

(i) the change brought about in law by the decision of the Apex Court in Ranjeetsingh Sharma’s case

(ii) the change in circumstance brought about by the filing of supplementary chargesheet by CBI in July, 2005

(iii) Issue of jurisdiction of the Special Court

32. Now this takes me to the consideration of the material on record. At this stage it must be observed that there is no material change in the fact situation except for filing of supplementary chargesheet. Therefore, the tentative observations or findings which are recorded by this Court while deciding the first Application will have to receive serious consideration while considering this Application and in fact the factual aspects which are dealt with and the conclusions which are drawn cannot be disturbed unless warranted by any additional material in supplementary chargesheet. In any case, I will have to consider factual aspects of the case for considering the submissions based on decision in Sharma's case.

33. The counsel appearing for the parties have taken me through the statements of material witnesses which are recorded in the present case as well as in the offences registered in the State of Karnataka and Hyderabad. Before, I consider the statements which are recorded in other cases registered in Andhra Pradesh and Karnataka, the argument of learned Senior Counsel appearing for the CBI that only the material forming part of the chargesheet can be considered will have to be dealt with. Therefore, a reference will have to be made to the decision in the case of State of Orissa(Supra) relied upon by the learned Senior Counsel. On the face of it, decision of the Apex Court

considers the scope of powers under section 227 of the said Code of 1973. The Apex Court has not dealt with the issue which specifically arises for my consideration. It must be borne in mind that the scope of inquiry in bail application and the scope of inquiry in an application for discharge is completely different. While considering the Application for bail, the court is concerned with the personal liberty of an individual which is guaranteed by the Constitution of India. The result of rejection of Application for discharge is that the accused has to face trial. However, the rejection of bail Application has the result of the accused languishing in jail till the conclusion of trial. The argument is that only the material which is placed alongwith the chargesheet by the prosecution will have to be considered while dealing with the bail application on merits and the material which is produced by the Applicant which does not form the part of the chargesheet cannot be considered. There are bail applications filed at a stage when investigation is in progress and chargesheet is not filed. The grounds taken in the bail application are not necessarily confined to the merits of the prosecution case. In many bail applications, there is a ground taken that there is a case of mistaken identity. There are grounds which are peculiar to the Applicant such as sickness, infirmity, age and other aspects. In my view, the principle which

is laid down by the Apex Court which governs the consideration of the Application for discharge cannot be stretched and be applied to consideration of bail application.

34. The prosecution has relied upon the statements of following witnesses in so far as the Applicant is concerned.

(i) Raju Shrivastava
(ii) Shyamsunder Shrivastava
(iii) B.Sadashiva
(iv) Sanjay Singh

The prosecution relied upon the alleged tape recorded conversation between the Applicant and Telgi. The prosecution relied upon a telephone diary of Telgi maintained by Ms. Rashana Ankalesaraiya.

35. There is a statement of Raju Shrivastav recorded on 01st August, 2003 under section 161 of the said Code of 1973 by the Special Investigating Team. The said Raju Shrivastav is a cousin of one Shamsundar Shrivastava from Hyderabad. He has stated in the statement that Shamsundar had informed him that one Sadashiva was carrying on business of selling stamps in Hyderabad from 1996-1997 and the said Sadashiva has not paid commission to Shamsundar therefore, Shamsundar

requested Raju to help him. According to Raju, Sadashiva contacted him and invited him to meet Telgi. Accordingly, in the meeting with Telgi, the said Raju was assured that he will be paid Rs.25,000/- per month. According to the said witness, two months thereafter, he came to know that Sadashiva was involved in sale of fake stamps. According to the said Raju, Telgi inquired with him on telephone about the Applicant and Telgi informed him that two of his men Sadashiva and Wahid have been kidnapped by the men of the Applicant and the Applicant was demanding a ransom of Rs.2 crores. Telgi informed him to find out the whereabouts of his men. According to the said Raju, he tried to contact Shamsundar and his friend Sanjay Singh who were the men of the Applicant. He stated that in the year 1999 a case was registered at Begum Bazar Police Station, Hyderabad against the Sadashiva and his men regarding sale of fake stamps. He stated that after the matter was settled with Applicant, Sadashiva started the business of selling fake stamps in Hyderabad and the same business came to end in the year 1999 when the case was registered. There is also a statement of the said witness Raju recorded under section 164 of the Code of Criminal Procedure, 1973. The said statement also refers to action of the Applicant of picking up Sadashiva and Wahid and discussion of the said witness with Telgi.

36. At this stage, it will be necessary to refer to the alleged confessional statement of Raju Shrivastav which was recorded before the learned Magistrate in connection with case registered at Begumbazar Police Station. The said statement was recorded on 06th September, 1999. The learned Counsel for the Applicant laid emphasis on the fact that in the said statement, the said Raju has not deposed about the incident of kidnapping. However, it must be borne in mind that this statement relates to a different offence registered at Hyderabad and therefore the statement refers to the facts relevant to that case. A copy of statement of statement of B Sadashiva recorded before the Additional Chief Metropolitan Magistrate is also annexed to the Application. He has given information in detail in said statement of his dealings with Telgi and the role played by the co-accused Telgi. He has disclosed in the said statement his own kidnapping on 20th February, 1998 by Shamsundar and Sanjay alias Sanjeev as well as the kidnapping of Abdul Wahid on 15th January, 1998. He stated that he was taken in Tata Sumo to Assembly Hall of Andhra Pradesh where the Applicant was there and in his presence the Applicant spoke to Telgi on telephone. According to him the Applicant instructed the Shamsundar and Sanjeev not to release him till ransom was paid. He has stated that he met Telgi in January 1999. He stated that the said Shamsundar and his associates had started their own

business by preparing the stamps with colour xerox and computer scanning. He has described a meeting with Telgi held thereafter in Hyderabad. He stated that Telgi informed him that he had spoken to the Applicant and after speaking to the Applicant, Telgi instructed him to run the business atleast for two months. He stated that he carried on business till last week of June, 1999.

37. There is a statement of Shamsundar Shrivastav recorded by the SIT. He has stated that Sanjay Singh brought Wahid to his room and Wahid was given in his custody. He stated that thereafter at the instance of Wahid, he met Sadashiva. Shamsundar stated that Telgi will not give money easily and therefore he will come alongwith the stamps so that money can be obtained from Telgi. Sadashiva demanded share in the amount which would be paid by Telgi. Accordingly, Shamsundar came to his premises and contacted Telgi and stated that Sadashiva and Wahid will not be released unless money is paid. He stated that the Applicant's associates Sanjeev Singh and others were providing necessary protection to the business of Telgi and were receiving money very regularly. He has stated that when he was arrested in connection with offence relating to Begum Bazar Police Station, he did not disclose this fact out of fear. He stated that till July, 2000 he worked at Mumbai and Pune. When he came back to Hyderabad in

January, 2002, he suddenly met Sanjay Singh. According to him Sanjay informed him that business of Sadashiva of selling fake stamps was continuing and the Applicant was supporting the said business.

38. There is a statement of Sanjay Singh. The said Sanjay Singh has stated about the so called kidnapping of the Sadashiva and Wahid. He stated that till August, 1999, he was receiving Rs.10,000/- per month from Sadashiv. According to him in January, 2001 Shamsundar Shrivastava informed him that Sadashiva has again started business of selling fake stamps. He stated that the said business has protection of the Applicant. There is a statement dated 14th October, 2003 of Sadashiva recorded by the SIT. He has disclosed the incident relating to kidnapping of Wahid and his own kidnapping. He has stated that he and Wahid were released after there was a talk between Telgi and the Applicant. He stated that as per the talk between the Applicant and co-accused Telgi, a sum of Rs.35 lacs was paid to the Applicant in instalments of Rs.2 crores and 3 lacs.

39. Reference will have to be made to the alleged telephonic conversation between the Telgi and the Applicant. There is a reference in the conversation to the business of Telgi of selling stamps. In the said conversation Telgi has described that his business was

not so big but there was some margin. It appears from the said conversation that the Applicant was aware of the nature of the business of Telgi. In the said conversation, Telgi has stated that there is some margin in the business but the stamps are not manufactured free of costs. In the conversation Telgi offered a sum of Rs.5 lacs to the Applicant to begin with. He stated that it was the Applicant who initiated everything. Telgi promised the Applicant that in future the Applicant will benefited. When Telgi offered initial payment of Rs. 5 lacs, the response of the Applicant was that "Five lacs se kam nahi chalta". Telgi stated that "monthly I will get something". The Applicant replied "work out nahi hoenga". The conversation ends by the Applicant telling Telgi to consider the figure quoted by him. The said conversation discloses that Telgi assured the Applicant that in future the Applicant will be benefited. It appears that some amount by way of advance was repeatedly offered by Telgi to the Applicant.

40. The factual position which emerges from prima facie consideration of the above material is that in the year 1998, the Applicant appeared to be aware about the business of co-accused Telgi of manufacture and sale of counterfeit stamps. The statements of Shamsundar discloses that Telgi informed him after

talking to the Applicant to carry on the business and infact he carried on the business till June, 1999. The statement of Shamsundar discloses that even in 2002 business of Sadashiva of selling fake stamps was continued under the patronage of the Applicant. Sadashiva was a person appointed by Telgi. The statement of Sanjay Singh discloses that in January, 2001 Shamsundar informed him that the business of Sadashiva had a protection of the Applicant. The said Sadashiva is all along described as the man of Telgi. In the statement of Sadashiva dated 14th October, 2003 it is stated that after settlement between the Applicant and Telgi, from time to time sum of Rs.two lacs or Rs.three lacs was paid to the Applicant by him and by Wahid totally amounting to Rs.35 lacs.

41. Thus, the factual scenario which emerges is that the alleged conversation between the Applicant and the Telgi in January, 1998 reflects that the Applicant was fully aware of the business of Telgi and his men at Hyderabad. The telephonic conversation between Telgi and Applicant after alleged kidnapping seems to be the beginning of involvement of Applicant. During the conversation, Telgi repeatedly offered large amount to the Applicant. As stated earlier, the statements of witnesses indicate that even after 1998 atleast till 2002, the business of Telgi which was run by Sadashiva continued at Hyderabad under the support of the

Applicant and the Applicant was regularly paid amounts at the instance of Telgi. Thus, the material on record does indicate the knowledge of the Applicant of Organised Crimes Syndicate of Telgi of manufacturing fake stamps and selling of the fake stamps in the year 1998 and after coming into force of MCOC Act i.e. after 24th February, 1999, the Applicant protected the business of co-accused Telgi at Hyderabad by accepting the amounts from time to time. It is in that context the entry of the telephone number of the Applicant in the telephone diary maintained at the instance of Telgi has some significance.

42. It is submitted that being M.L.A., the Applicant was not a public servant. There cannot be any dispute about the legal proposition. However, it must be noted that from 22th October, 1999 to 26th November, 2001 the Applicant was a Minister and there is a material on record to show that during the said period he supported the activities of Organised Crime Syndicate of Telgi.

43. A submission was made that mere printing of fake stamps and sale thereof will not be an Organised Crimes in view of the definition of the Organised Crime. It is therefore, necessary to refer to the prosecution case. As reflected from the supplementary chargesheet filed by the CBI, the case of the

prosecution is that it was revealed during the investigation that the co-accused Telgi started threatening complainant in one of the cases registered against him. The allegation against the co-accused Telgi and members of Organised Crimes Syndicate are also regarding use of violence, threat of violence, intimidation and coercion. The case is that there are confessional statements of accused No.41 Suraj and accused No.38 Shekhar in which they have deposed about the threats of violence, intimidation and coercion. No doubt that the statements are confessional statements of the co-accused. In this context section 18(1) of the MCOC Act will have to be considered which reads thus:

> 18. Certain confessions made to police officer to be taken into consideration.---(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (I of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such

person or co-accused, abettor or conspirator:

. Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

Therefore, at this stage the confessional statements of co-accused can be considered. There is material on record to indicate that there was a continuing unlawful activity by members of Organised Crime Syndicate of Telgi by use of threat or violence, intimidation or coercion.

44. The other issue which is canvassed is regarding jurisdiction of the Special Court. My attention has been invited to notification dated 19th July, 2005. The said notification reads thus:

NOTIFICATION

Law and Judiciary Department,
Mantralaya, Mumbai-400 032,
Dated the 19th July, 2005.

. No CRC/1005/(152)-IX- In exercise of the powers conferred by sub-section (3) read with sub-section (1) of section 5 of the Maharashtra control of Organised Crime Act, 1999 (Mah.XXX of 1999), the

Government of Maharashra, with the concurrence of the Hon'ble Court of Judicature at Bombay, hereby appoints Shri.B.M.Sardeshpande, 4th Additional District Judge and Additional Session Judge, Pune to preside over the Special Court at PUne, for trial of such offences where the provisions of said Act have been invoked, relating to counterfeit Government stamps and stamp papers, emanating from and abetted, in the State of Maharashtra, and for that purpose, amends the Government Notification, Law and Judiciary Department, No.CRC/1005/(141)-XI, dated the 9th June 1999 as follows namely:-

. In the said notification, for entry 4, the following entry shall be substituted, namely:-

"4.	Special Court, Pune	Pune Rural/Pune City/Kolhapur Range and to try all such offences where the provisions of the said Act have been invoked, relating to counterfeit Government stamps and stamp papers,emanating from,and abetted, in the State of Maharashtra.	Shri.B.M. Sardeshpande, 4th Additional District Judge & Additional Session Judge, Pune.

By order and in the name of
Governor of Maharashtra,

Sd/-
(S.M.Ratnakar)

Legal Advisor-cum-Joint Secretary

45. In this Application we are concerned with the offences under the MCOC Act. The jurisdiction of the Special Court, as per the said notification, relates to trial of all offences where provisions of the MCOC Act have been invoked relating to counterfeit government stamps and stamp papers emanating from the State of Maharashtra. The perusal of the chargesheets filed on record show that the manufacturing of stamps was being done by the Organised Crimes Syndicate in Mumbai. The offence does not stop at manufacturing of counterfeit stamps. But the process of manufacturing seems to be continuous which is associated with continuous sale of the fake stamps in different parts of India. The role ascribed to the Applicant is of aiding and abetting the offence. Sale of counterfeit stamps is part of the Organised Crime. The Special court has jurisdiction to try all offences relating to counterfeit government stamps emanating from the State of Maharashtra. In my view, prima facie, it is difficult to accept the contention that the Special Court has no jurisdiction to try offence against the Applicant.

46. In the case of Ranjeetsingh, the Apex Court has considered the definition of word "abet" defined in section 2(1)(a) of the MCOC Act. The Apex Court held

that "

> The interpretation clause as regard the expression ‘abet’ does not refer to the definition of abetment as contained in Section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under Sections 107 and 108 of the Indian Penal Code. **The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the perview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication (b) association with**

> **any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr.Sharan, would not,in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence."**(Emphasis supplied)

In the present case, prima facie there is material on record to show that the Applicant had knowledge about the continuing Organised Crime of printing and selling of fake stamps. The material which is produced on record indicates that the Applicant rendered protection

to continuing activities of sale of the fake stamps which is an integral part of the Organised Crime. The association of the Applicant is with the knowledge or having reason to believe that he is engaged in assisting Organised Crime Syndicate of Telgi. Prima facie there is some material on record to come to the conclusion that the Applicant abetted the commission of the Organised Crimes.

47. It must be borne in mind that sub-section (4) of Section 21 of the MCOC Act applies in the present case. In Ranjeetsingh Sharma's case, the Apex Court has considered the scope of section 21(4) of the said Act. The Apex Court held that the restriction imposed cannot be stretched too far. The Apex Court held that wording of section 21(4) of the MCOC Act does not lead to the conclusion that the court must arrive at positive finding that the Applicant has not committed an offence under the Act. In paragraph No.49, the Apex Court held thus:

> 49. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. **If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order**

> **granting bail may be passed.** The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. (Emphasis supplied)

48. Thus, what has been held by the Apex Court is that if the Court having regard to the material placed on record is satisfied that in all probability the Applicant may not be ultimately convicted, an order granting bail may be passed. In the present case, after considering the material on record it is impossible to come to the conclusion that in all probability the Applicant may not be convicted. If such satisfaction cannot be recorded on an objective consideration of the material on record, relief under section 21(4) of the MCOC Act cannot be granted.

49. It will be necessary to see reason given by the Apex Court granting bail in favour of Ranjeetsingh Sharma. Paragraph No.42 reads thus:

> 42. The High Court does not say that the appellant has abetted Telgi or had conspired with him. The findings of the High Court as against the appellant are

> attributable to allegations of abetting Kamat and Mulani. Both Kamat and Mulani were public servants. They may or may not have any direct role to play as regard commission of an organised crime but unless a nexus with an accused who is a member of the organised crime syndicate or an offence in the nature of organised crime is established, only by showing some alleged indulgence to Kamat or Mulani, the appellant cannot be said to have conspired or abetted commission of an organised crime. Prima facie, therefore, we are of the view that Section 3(2) of MCOC Act is not attracted in the instant case.

The test laid down by the Apex Court is that a nexus with an accused who is a member of Organised Crimes Syndicate must be established. In the case of the Ranjeetsingh Sharma, the Apex Court held that at highest what can be said is that the Applicant Ranjeetsingh abetted two other public servants Kamat and Mulani. In the present case, material shows the nexus of the Applicant with principle accused Telgi who is a member of Organised Crimes Syndicate. The nexus is with the knowledge of the organised crime activities. The

association of the Applicant relates to the period when the sale of counterfeit stamps was continued in Hyderabad.

50. I find that no case is made out for enlarging the Applicant on bail and the Application is rejected.

JUDGE